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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,955	06/21/2001	Johann Beller	WT0012-US	2770

7590 10/02/2002

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EXAMINER

MILLER, TAKISHA S

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 10/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	Application No.	Applicant(s)
	09/884,955	BELLER ET AL.
	Examiner Takisha S Miller	Art Unit 2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_\_.
- 2a)  This action is FINAL.                            2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-36 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-7, 9, 11-15, 19, 21-24, 26, 28-31, 35 and 36 are rejected under 35 U.S.C. 102(b)

as being anticipated by Nability et al. (5,701,646). Nability et al. teach an apparatus for generating a fluid flow comprising: a displacement pump (16) with at least one flow vessel (20) of deformable lumen and a pump drive, support means (Fig.2)(Col.6, lines 21-26), a measuring arrangement (14), a pressure sensor (42) and evaluation electronics (12). The evaluation electronics (12) are being operable to derive measurements of a frequency of the displacement motions (Col.4, lines 41-46), a volume estimate of the total volume of fluid delivered (Col. 2, lines 10-13), a status of the number of cycles of the pump (Col.5, lines 62-63), a suction measurement (Col. 9, lines 11-14), a rotary pump drive (Fig.5)(Col. 6, lines 24-27), flow vessel (20) being compressed by the pump drive and forced against the support means such that the support means is elastically strained and a strain sensor for sensing a strain of the support means (Fig.5)(Col. 7, lines 51-66).

Regarding claims 2, 10, 20 and 27, it is inherent that the flow rate can be measured with the Nability et al. reference.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8,16,25 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nabity et al. (5,701,646) in view of Meijer (5,165,873). Nabity et al. teach an apparatus for generating a fluid flow including a pump drive but does not explicitly teach a linear pump drive. Meijer teaches a linear pump drive (Abstract, lines 3-6). It would have been an obvious matter of design choice to use a linear pump drive instead of a rotary pump drive, since applicant has not disclosed that this difference solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the linear pump drive.

Claims 17,18,33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nabity et al. (5,701,646). Nabity et al. teach the claimed invention including a sampler (18) but do not explicitly teach a mobile/portable sampler. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sampler mobile/portable, since it have been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Takisha S Miller whose telephone number is (703) 305-4969. The examiner can normally be reached on Monday - Friday (8:00 am - 4:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Fuller can be reached on (703) 308-0079. The fax phone numbers for the

organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

TM  
September 30, 2002



HARSHAD PATEL  
PRIMARY EXAMINER